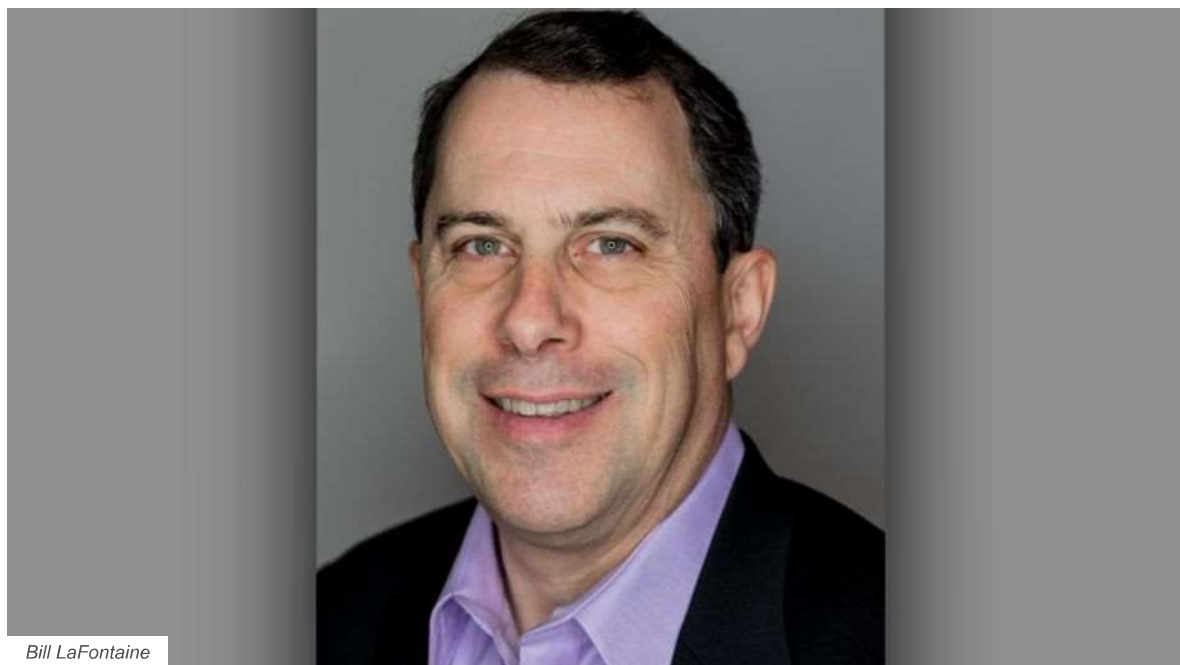


# **EXHIBIT 4**

## IBM's IP head explains strategy behind the company's litigation track record

Angela Morris  
29 March 2022



Bill LaFontaine

When IBM sued a Swiss tech company last week for patent infringement, it was an example of a rare patent assertion by Big Blue.

IAM used Docket Navigator to conduct a **deep dive into the company's litigation track record** and found just 20 cases in which IBM has asserted its patents in district court since 2008.

We caught up with Bill LaFontaine, IBM's general manager of intellectual property and vice president of research business development, to learn more about the company's litigation strategy in court and the Patent Trial and Appeal Board.

Here is our exclusive interview with LaFontaine, edited for brevity, clarity and IAM style.

**IAM:** Since 2008, IBM only litigated 20 cases as a patentee, according to Docket Navigator. Can you explain why there are so few as a plaintiff and how you avoided litigation for the most part?

**Bill LaFontaine:** We have a long history of licensing to a lot of people, and it has only been recently that we've had to go offensive. We don't make outrageous demands; we make what we think are reasonable demands, and because we value getting a licence back, our terms with clients can be significantly different. Since we've been proactive with people about taking licences, you get to the later stages where you get new e-commerce companies that are not familiar with patents. You must remind them that someone else might have innovated and created what you're using, and you should pay fairly for the use of that.

**How do you know it is time to stop negotiating and move forward to file a lawsuit?**

**LaFontaine:** If you look at some of the cases that we've filed, we will have talked to clients for a long time. With very rare exception, the time is measured in years, not months or days. They sometimes say, 'Sue me' – they basically tell you that – or we get to a point where we're not having any meaningful discussion anymore. We need to defend our rights.

**Docket Navigator has reported settlements in many of IBM's cases. What is your litigation strategy regarding settlements versus jury trials?**



**LaFontaine:** I've been in the chair for eight-and-a-half years. I've gone to a jury once. All the others I settled usually after *Markman*. That's when everybody wakes up: all the motions to dismiss, venue motions and IPRs, Section 101 – everything is settled. Then suddenly, they're now at *Markman*, and they now see the claim construction, and they wake up to say, 'This is a big deal'.

**Once their eyes are open, what is your strategy to settle the case and how is the offer different than what you tried to negotiate pre-lawsuit?**

**LaFontaine:** It is a case-by-case basis, so there's no rule of thumb. We're willing to do deals on cash and on other attributes that I'd rather not disclose. But I never take less than I wanted originally. Never. When we go after somebody, it may take years, but we'll go the distance. If they want to settle, we're very willing to settle. We want a fair result. It is a challenge figuring out whether the defendants we're dealing with have thought about the end game. If you go all the way to the end and win, what did you spend? We never do a case that we don't think we have at least one or two patents we will win on. I'm looking at it and say, 'I may not win everything, but I'm going to win.' If you're on the other side: how much will you spend, and how much will you lose? Have you thought about it? Sometimes it takes a long time for them to get to that level of thinking.

**IBM has been sued 152 times since 2008 and Docket Navigator reported settlements for 73% of 30 cases with a tracked outcome. What does that mean to you?**

**LaFontaine:** I know of some early NPE cases that show up where it's a shakedown and what they want is a small amount of money to go away. That will be the settled category. We get quite a few of those. But we invested a great deal in the case of Intellectual Ventures when they sued us, and that was because they sued our clients and we defended our clients. There we will go the distance and we're going to win. I'm not surprised by the data. I think there's lots of little piddly guys, folks that show up, and we must be pragmatic about the cost of defending ourselves. We do pick cases where even if it's small, we'll still go and say, 'Fine, I'm going to go IPR like crazy.' I want to tell an NPE to leave us alone, because we're not going to be cheap. I think the data shows that the legal team at IBM, they're good at understanding what real risk is. You settle when it makes sense. You don't go to the end unless you know you're going to win. The word for it is pragmatic.

**Switching to Docket Navigator data about your PTAB cases, it says out of 42 of IBM's IPR petitions against other people's patents, you won or partially won 38% and you lost 52%. What do you think of that? Is that good?**

**LaFontaine:** I don't know. Every petition we do, there's a rationale for doing it. It's part of a strategy. If you lost, does that mean anything? Some of the ones you won – you know you're going to win. They were obvious. There are serial IPR filers, and for them, it's different. For us, every IPR is a strategic decision.

**Docket Navigator lists 29 cases where IBM defended its assets in IPRs, and it reports you won or partially won 71%. What do you think of that?**

**LaFontaine:** We are very confident in patents we file against people. People attack and most of the time we're right about what we're saying. We're not being frivolous. Some times you want someone to file an IPR. If the patent survived, great – you learned something. If it didn't survive, at least I now know it and I'm not going to go spend more time. Either outcome works for us. We don't file frivolous lawsuits with frivolous patents. [...] If somebody is on the other side, they ought to recognise that we're not throwing junk at them. If we're showing up, we're serious. Take me seriously, because you're going to spend a bunch of money and then decide you need to take a licence.

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